

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

ANN MICHELE WEST,

Debtor.

Return Date: 5/16/18 at 9:30 a.m.
Objections Due By: 5/9/18 by 5:00 p.m.

Chapter 7
Case No.: 817-71075-reg

X

NOTICE OF MOTION

PLEASE TAKE NOTICE that Kenneth Kirschenbaum, the Chapter 7 Interim Trustee (the “Trustee”) for the estate (the “Estate”) of Ann Michele West (the “Debtor”), by and through his attorneys, Kirschenbaum & Kirschenbaum, P.C., will move before the Honorable Robert E. Grossman, United States Bankruptcy Judge, at the United States Bankruptcy Court, Long Island Federal Courthouse, 290 Federal Plaza, Courtroom 860, Central Islip, New York, on **May 16, 2018 at 9:30 a.m.**, or as soon thereafter as counsel can be heard, for an Order authorizing the Trustee to employ and retain the firm of Kirschenbaum & Kirschenbaum, P.C., as attorneys for the Trustee to perform services as requested by the Trustee *nunc pro tunc* to April 10, 2018, with such compensation as is approved by the Court.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested must be in writing, must conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court, must be filed electronically in accordance with General Order #462 (which can be found at the Court’s official website, www.nyeb.uscourts.gov) by registered users of the Bankruptcy Court’s electronic filing system, and by all other parties in interest on a 3.5 inch computer disk in Portable Document Format (PDF), Corel WordPerfect, Microsoft Word, DOS text or a scanned image file at the above address together with proof by affidavit, admission or otherwise that copies have been properly served. Objections, if any, must be served upon: (i) the undersigned counsel for

the Trustee; and (ii) the United States Trustee, Long Island Federal Courthouse, 560 Federal Plaza, Central Islip, New York 11722 so as to actually be received no later than **5:00 p.m. on May 9, 2018**, or the relief requested may be granted as unopposed.

Dated: Garden City, New York
April 20, 2018

KIRSCHENBAUM & KIRSCHENBAUM, P.C.
Attorneys for the Trustee

By: Steven B. Sheinwald
Steven B. Sheinwald
200 Garden City Plaza
Garden City, NY 11530
(516) 747-6700

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:

ANN MICHELE WEST,

Case No. 817-71075-reg
Chapter 7

Debtor.

X

**APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION OF COUNSEL
TO TRUSTEE NUNC PRO TUNC TO APRIL 10, 2018**

**TO: THE HONORABLE ROBERT E. GROSSMAN,
UNITED STATES BANKRUPTCY JUDGE:**

The application of Kenneth Kirschenbaum states:

1. I am the Chapter 7 interim trustee (the “Trustee”) in this matter and a member of Kirschenbaum & Kirschenbaum, P.C. (“K&K”). I submit this application in support of my request for an order authorizing my retention of K&K as my general counsel in this case *nunc pro tunc* to the date of my appointment as Trustee, April 10, 2018.
2. The services of an attorney are required to enable me to perform properly as Trustee.
3. On February 25, 2017, Ann Michele West (the “Debtor”) filed a voluntary petition for relief (the “Petition”) pursuant to Chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”). On April 10, 2018 the Court converted this case from one under Chapter 11 to a case under Chapter 7 of the Bankruptcy Code, and an appropriate order was entered. Upon the conversion I was appointed Chapter 7 interim trustee. Following my appointment, I reviewed the Debtor’s Schedules (the “Schedules”), Statement of Financial Affairs (“SOFA”) and additional documents filed with the Court. Based upon my review I learned that at the time of filing the Debtor and her non-debtor spouse held a 100% interest in real property located in Southampton, New York (the “Property”) as tenants by the entirety, which they occupied and continue to occupy as their residence. According to the Debtor’s Schedule A annexed to the Petition, the Debtor estimated the current value of the Property at the time of filing to be

\$8,500,000.00. Moreover, the Debtor's Fourth Amended Disclosure Statement, which was filed on April 2, 2018, states that an appraisal commissioned by a prospective lender estimated the Property value to now be at least \$11,500,000.00. At the time of filing, the Property was encumbered by a first and second mortgage. Based upon the filed proofs of claim, the first mortgagee held a claim in the sum of \$4,478,607.25 and the second mortgagee held a claim in the sum of \$470,156.01 as of the date of filing. According to the Debtor's Schedule C, the Debtor claimed a homestead exemption pursuant to New York CPLR equal to the applicable statutory limit, which is \$165,550.00.

4. Based upon my independent investigation, I determined that administration of the Property would produce a meaningful benefit for all creditors of the Estate, and that, based upon the aggregate sum due the unsecured creditors listed in the Debtor's Schedules, the potential to make a 100% distribution to the unsecured creditors exists. However, in order to properly administer this asset and the Estate as a whole, I will require the services of legal counsel.

5. Besides requesting authorization to retain counsel, this application also requests that the court authorize the retention of counsel *nunc pro tunc* to my date of appointment, April 10, 2018. During the period between my appointment and the submission of this application, I did ask counsel to perform legal services for me, which included the review of various legal documents, and telephone communications with counsel for the Debtor and the two mortgagees concerning the pending state court foreclosure lawsuit, as well as a potential sale by me of both the Estate's and the non-debtor spouse's interest in the Property free and clear of liens and encumbrances pursuant to 11 U.S.C. § 363(b) and (f). It was only after K&K rendered these services and reported back to me that I decided to administer the Property and to retain counsel to perform those legal services which would be required in connection with the administration of the Estate. The total amount of time expended by K&K at my request on preliminary legal matters between the time of my appointment on April 10, 2018 and the filing of this application

is less than five (5) hours. Given the limited amount of time expended by K&K to date rendering legal services for the benefit of the Estate, and the length of time between my appointment and the filing of this application, I would ask the Court to authorize my retention of K&K *nunc pro tunc* to the date of my appointment, April 10, 2018.

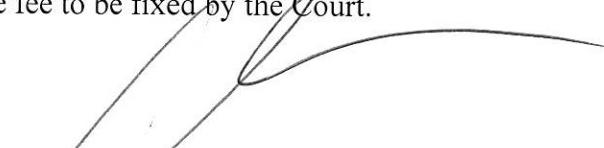
6. As my general counsel, K&K will be responsible for communicating with counsel for all interested parties to this proceeding, engaging in any necessary legal negotiations on my behalf, reviewing and analyzing all legal matters, preparing all required legal documents, including proposed orders, applications, pleadings and notices in connection with the performance of my duties as trustee, and making all necessary court appearances on my behalf.

7. The members and associates of Kirschenbaum & Kirschenbaum, P.C. do not have any connection with the Debtor, her creditors or any other party in interest, represent no interest adverse to the estate, and are disinterested persons as that term is defined in Section 101 (14) of the Bankruptcy Code.

8. No prior application for the relief requested herein has been made.

WHEREFORE, your Applicant requests an order authorizing the retention of Kirschenbaum & Kirschenbaum, P.C. as attorneys under a general retainer *nunc pro tunc* to April 10, 2018, and to apply for a reasonable fee to be fixed by the Court.

Dated: Garden City, New York
April 20, 2018


KENNETH KIRSCHENBAUM, Interim Trustee
200 Garden City Plaza
Garden City, New York 11530
(516) 747-6700

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of

ANN MICHELE WEST,

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AFFIRMATION

Steven B. Sheinwald, an attorney admitted to practice in the courts of the State of New York and in this Court affirms the following to be true under penalty of perjury:

1. The undersigned is the attorney who will bear primary responsibility for the representation whose authority is sought herein.
2. The undersigned has read and is generally familiar with: The Bankruptcy Code together with current amendments, The Bankruptcy Rules, and The Local Rules of this Court.
3. The undersigned is competent to represent the interest of the entity on whose behalf representation is now sought in all proceedings now pending or which may reasonably be expected.
4. The statements made in the annexed application are true to the best of my knowledge, information, and belief; no agreement or understanding exists between your deponent and any other person for a division of compensation, and your deponent has fully complied with all requirements and has not violated 11 U.S.C. Section 504 or 18 U.S.C. Section 155.
5. The members and associates of Kirschenbaum & Kirschenbaum, P.C. do not have any connection with the Debtor, her creditors or any other party in interest, represent no interest adverse to the estate, and are disinterested persons as that term is defined in Section 101(14) of the Bankruptcy Code.
6. Partners of Kirschenbaum & Kirschenbaum, P.C. will bill the estate at their usual hourly rate of \$400.00 to \$600.00 per hour, depending upon the partner rendering services, and

associates will bill the estate at their usual hourly rate of \$250.00 to \$400.00 per hour depending upon the associate rendering the services.

Dated: Garden City, New York
April 20, 2018

KIRSCHENBAUM & KIRSCHENBAUM, P.C.

By: Steven Sheinwald
Steven Sheinwald
200 Garden City Plaza
Garden City, N.Y. 11530
(516) 747-6700

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AFFIDAVIT OF SERVICE

EILEEN WAGDA, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside at Levittown, New York.

On April 20, 2018, I served a true copy of the annexed **NOTICE OF MOTION, APPLICATION and AFFIRMATION** in the following manner:

BY: Mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) listed below:

Office of the United States Trustee
Long Island Federal Courthouse
560 Federal Plaza
Central Islip, New York 11722

Mark A. Frankel, Esq.
Backenroth Frankel & Krinsky, LLP
800 Third Avenue, 11th Floor
New York, New York 10022

Sworn to before me on this
20th day of April 2018

NOTARY PUBLIC

WENDY L GONZALEZ
Notary Public, State of New York
No. 01GO6355714
Qualified in NASSAU County
Commission Expires March 13, 2021